
**In the
Supreme Court of the United States**

OCTOBER TERM, 1978

NO. 78 - 1215

GENE BALL,

Petitioner

versus

BOARD OF TRUSTEES OF THE KERRVILLE
INDEPENDENT SCHOOL DISTRICT, HENRY H. WIED,
MARGARET WATSON, DAN W. BACON, PAT BRADEN,
EARL A. COCKRANE, MAURICE HAUFLE AND C. H.
BORCHERS, MEMBERS OF THE BOARD OF TRUSTEES,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
Respondents

REPLY BRIEF
LETTER RESPONSE TO RESPONDENTS BRIEF IN
OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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Attorney for Petitioner

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On pages 2 and 3 of Respondent's brief in opposition to petition for writ of certiorari Respondents (erroneously) assert that "It is also undisputed, and Ball so admits, that the former school trustees acted in good faith." Respondent's then cite the following from the hearing had November 19, 1969 before the Commissioner of Education of the State of Texas:

"Our position is that the Board has acted in good faith; that they have exercised their best judgment; that Mr. Barr in particular has exercised a profes-

sional judgment that Mr. Ball's beard, if he were allowed to teach with it would, in the sense of setting an example, make it more difficult to enforce a policy that the Kerrville Independent School District has that male students who are old enough to shave be clean shaven."

(Appendix to brief in U.S. Court
of Appeals, page 196)

The above lines are lifted out of context from the opening statement of Mr. Ball's attorney at the November 1969 hearing before the Commissioner of Education. Mr. Ball would respectfully request that the Court read the *entire* opening statement and, particularly, the first full paragraph commencing on page 5. (pages 3, 4, 5, pl's exhibit F to record in Court of Appeals, below). In this context the Court can see for itself that even prior to commencement of the first administrative hearing, Mr. Ball did *not* equate *good faith in the sense of apparent good intentions with the exercise of a reasonable discretion*. Not even, however, in the loose sense of "good intentions" or absence of specific malice can there be found basis for respondents' remark about *good faith* being an *undisputed* issue of the case. (Respondents' Brief, pages 3 & 4).

Included in relief sought by Mr. Ball in his Section 1983 action filed in U. S. District on February 19, 1970 (exactly three months after the hearing before the Commissioner) was a plea that *exemplary damages* be assessed against these same respondents. As to the present status of this "undisputed" issue, Mr. Ball would respectfully refer the Court to his like plea for *exemplary damages* on page 14 of his Third

Amended Complaint (A-39, Appendix). The factual basis for this plea that exemplary damages be assessed is alleged in paragraph 21 on page 9 of Plaintiffs' Third Amended Complaint (Appendix Page A-39).

In its significant *Legal sense, good faith*, its meaning and its presence or absence, is a matter which must be determined by the trial court. Good faith, perhaps, can only be demonstrated by a *successful defense on the merits*. cf. *McLaughlin v. Tilendus*, 398 F 2d 287 (7th Cir-1968) at 290, 291. Moreover, it is alleged that unreasonably obstinate and obdurate conduct of respondents not only caused *this* lawsuit to be filed, but also their own state court proceeding and its perpetuation, See: paragraph 15, Plaintiff's Third Amended Complaint, Appendix pages - A-34,35 and 36. cf. *Horton v. Lawrence County Board of Education*, 449 F 2d 793 (5th Cir. - 1971).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this 7th day of March, 1979 served three copies of this letter response to Respondent's brief on Lavern D. Harris, Realty and Trust Building, Kerrville, Texas, Attorney for Respondents.

s/ Joe M. Egan, Jr.
JOE MIKE EGAN, JR.